IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 17 OF 2005.

The Sarpanch,
Village Panchayat of Collem,
Collem, Goa. .... Appellant.

Versus

1. M/s. Passive Active Tourism,
   through its Proprietor,
   Shri Joseph Barreto,
   37 years of age,
   married, businessman,
   r/o Hotel 4 Pillars,
   Rua de Ourem, Panaji, Goa.
2. Mrs. Caroline Fernandes,
   major in age, housewife,
   resident of Sanguem, Goa.
3. Mrs. Milagrina Mascarenhas,
   housewife, major in age,
   resident of Sanguem, Goa.
4. Mrs. Mina Pathan,
   w/o Babu Pathan,
   major in age, housewife,
   resident of Sanguem, Goa.
5. Mr. Babu Pathan,
   major, in age,
   resident of Sanguem, Goa.
6. Mrs. Lalita Babi Naik,
   housewife, major in age,
   resident of Sanguem, Goa.
7. Shri Nanu Chari,
   resident of Sanguem, Goa.
8. Mr. Gaurish Mapari,
   major in age, resident of
   Sanguem, Goa.
9. Shri Naresh Shirgaokar,
   resident of Collem, Goa.
10. Mr. Manuel Fernandes,
    Proprietor of Apollo Bar,
    resident of Sanguem, Goa.

11. Shri Subhash Paste,
resident of Sanguem, Goa.
12. Shri Xavier Andrade,
resident of Sanguem, Goa.
13. Shri Babli Palyekar,
major in age, resident of
Sanguem, Goa.
14. Smt. Sunita alias Geeta G. Dessai,
major in age, resident of Sanguem, Goa.
15. Smt. Ugwala Desai,
resident of Sanguem, Goa.
16. Shri Anand Naik,
r/o Salgaokar Farm, Sanguem, Goa.
17. Shri Shiva Vakode,
resident of Sanguem, Goa. .... Respondents.

Shri T. Pereira, Advocate for the Appellant.

Shri A.R. Kantak, Advocate for the Respondent No.1.

Shri R. Pednekar, Advocate for the Respondents No.2 to 17.

CORAM: D. D. SINHA, J.

DATE: 23rd NOVEMBER, 2005.

ORAL JUDGMENT:

Heard Shri T. Pereira, the learned Advocate for the Appellant, Shri A.R. Kantak, learned Advocate for the Respondent No.1 and Shri R. Pednekar, learned Advocate for the Respondents No.2 to 17.

2. Admit. By consent heard forthwith.

3. The appeal is directed against the Order dated 19th November, 2004

passed by the Civil Judge S.D. in the Special Civil Suit No . 2/04/A whereby the application for temporary injunction under Order 39, Rules 1 and 2 r/w S.151 C.P.C. moved by the respondent No.1/original plaintiff came to be allowed and the defendants were restrained from entering, trespassing, and obstructing the peaceful possession of the suit property and from damaging the plantation, fencing and other structures standing in the suit property, carving out road in the suit property, obstructing the plaintiff from using the well water and from interfering in the suit property in any manner whatsoever.

4. The counsel for the appellant/original defendant No.17 has contended that in the instant case so far as the well in question is concerned, it is not in dispute that in the year 2002 the respondent No.1/plaintiff submitted an application to the present appellant (Sarpanch of the village) seeking no objection certificate for drawing water from the well in question. It is contended that the said permission/no objection was granted to respondent No.1 vide Order dated 8.4.02 on certain terms and conditions such as signing an agreement, payment of Rs.2000/- per annum, etc. However, the respondent No.1 failed to sign the agreement and did not fulfil the conditions. It is further contended that in the said application itself the respondent No.1 has specifically stated that the well in question is a public well though partly located in his property situated in Survey

No.58/5. Since the respondent No.1 did not want to enter into an agreement and pay the necessary charges, found out a novel method for giving a go-bye to these aspects and therefore moved the application for temporary injunction in the suit in question.

5. The counsel for the appellant further contended that the appellant is ready and willing to supply water to the respondent No.1 without prejudice to the rights of the parties, during the pendency of the suit if the respondent no.1 complies with the condition mentioned in the Order of grant of permission dated 8.4.02 for drawing water from the well in question.

6. The counsel for the appellant further contended that so far as the road in question is concerned, the appellant shall take all care not to damage any part of the property of respondent No.1 which is abutting the road, without prejudice to the rights of the parties during the pendency of the suit, and the road in question may be permitted to be used by the villagers i.e. Respondents No.2 to 17.

7. The counsel for the respondent No.1 states that the respondent No.1 shall comply with the conditions mentioned in the Order dated 8.4.02 whereby permission is granted by the appellant to the respondent No.1 for

drawing water from the well in question, if he so desires, without prejudice to the rights of the respondent No.1, during the pendency of the suit. The counsel for respondent No.1 further contended that during the pendency of the suit if the road in question, though located beyond the suit property, is permitted to be used by the Respondents No.2 to 17, the appellant must ensure that whoever shall use the road, shall not cause any damage to the property of the respondent No.1 which is abutting the road in question.

8. I have considered the contentions canvassed by the learned counsel for the appellant as well as respondent No.1. In the instant case in view of the above referred facts and circumstances, it is apparent that the respondent No.1 in fact has applied for no objection certificate to lift the water from the well which was also granted on certain terms and conditions. However the respondent No.1 till this time failed to comply with those conditions and therefore in my opinion it is open for the resident No.1 to comply with those conditions mentioned in the Order dated 8.4.02 passed by the appellant if he so desires without prejudice to his rights in the suit.

9. Similarly the counsel for the appellant has made a categorical statement before this Court that the road if it is permitted to be used by the villagers he will take all care and caution to see that no damage is caused to

the property of the respondent No.1 which is abutting the road. Similar statement is made by the learned counsel for the respondents No.2 to 17. It is also not in dispute that the road in question is beyond the boundary of he suit property of the respondent No.1. In that view of the matter, in my opinion there is no harm in permitting the appellant as well as other villagers i.e. respondents No.1 to 17 to use the road in question without prejudice to the rights of the appellant as well as the respondents during the pendency of the suit.

10. For the reasons stated hereinabove, the impugned Order dated 19th November, 2004 stands modified only in respect of the above referred two aspects, one which pertains to the well and the other the permission to the villagers to use the road.

Appeal partly allowed to the above extent. No order as to costs.

D. D. SINHA, J.

sl.